

In a Preliminary Hearing Order dated January 27, 1994, Administrative Law Judge Floyd V. Palmer found that the claimant was an employee of the respondent within the meaning of the Kansas Workers Compensation Act and ordered appropriate benefits be provided by the respondent.

Respondent filed this application for review raising the sole issue as to whether or not the claimant's personal injury by accident arose out of and in the course of his employment with the respondent. Specifically, the respondent is alleging that within the meaning of the Kansas Workers Compensation Act the claimant is not an employee of the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board finds as follows:

A decision regarding whether claimant's accidental injury arose out of and in the course of his employment with the respondent is one of the issues made subject to Appeals Board review by the provisions of K.S.A. 44-534a(a)(2).

In the fall of 1993, the claimant was a nursing student in the final semester of a two-year accelerated nursing program at Washburn University of Topeka, Kansas. Part of the required nursing program training was an eight-week clinical program that all students are required to complete and the claimant's assignment for this program was St. Francis Hospital in Topeka, Kansas. The clinical program is provided through a mutual agreement and understanding entered between Washburn University of Topeka School of Nursing and St. Francis Hospital.

On September 11, 1993, some two to three weeks into the clinical program, claimant injured his left arm as he was transporting a patient from a bed to a bedside commode. As a direct result of this accident, claimant sustained a distal biceps tendon rupture of the left elbow. He was first seen in the St. Francis Hospital Emergency Room on the day of his accident and then referred to Michael J. Schmidt, M.D., an orthopedic surgeon, on September 13, 1993, for further treatment. On September 14, 1993, Dr. Schmidt performed a primary surgical repair of the distal biceps tendon on the left. At the time of the preliminary hearing held in this matter on January 26, 1993, the claimant was continuing to recover from such surgery.

In the case at hand, the Administrative Law Judge entered an order of compensation dated January 27, 1994, which granted claimant's request for temporary total and medical benefits. The Administrative Law Judge specifically found that the claimant, for purposes of the Kansas Workers Compensation Act, was an employee of the respondent, St. Francis Hospital. The Administrative Law Judge found that the claimant was working for the respondent in exchange for training. He further found that the agreement between Washburn University and St. Francis Hospital did not effect the rights of injured students to receive compensation.

The claimant argues that since the legislature has specifically set forth in K.S.A. 44-501(g) their intent that the Kansas Workers Compensation Act shall be liberally construed for the purpose of bringing employees and employers within the Act that the claimant in this case should be provided with such protection.

The claimant further argues that he was not a volunteer which would require the respondent to file an election for coverage, but was an employee under a contract of service or apprenticeship with the respondent. See K.S.A. 44-508(b). It is the claimant's position that he was either a regular employee working under a contract for service being compensated in the form of training and experience, or he was an apprentice working for

a specific time for the purpose of learning the trade of nursing. The claimant cites two cases in support of his argument, one involves a student nurse that is considered an employee for the purposes of the Mississippi Workers Compensation Act, and the other provides coverage for a student teacher pursuant to the Michigan Workers Compensation Act. Walls v. North Mississippi Medical Center, 568 So.2d 712 (Miss. 1990); Betts v. Ann Arbor Public Schools, 271 N.W.2d 498 (Mich. 1978).

The respondent contends that the claimant is not an employee within the meaning of the Kansas Workers Compensation Act as he did not receive any compensation, remuneration or payment from the respondent related to his clinical training. No employment contract of any kind existed between the claimant and respondent. Washburn University simply assigned the claimant to the respondent as opposed to assigning him to other area hospitals. Additionally, as there was no contract of apprenticeship between the claimant and the respondent, and no wages or other remuneration was paid to the respondent, the claimant's argument that he was an apprentice is invalid.

Respondent also relies on a Kentucky decision supporting his argument that the claimant, in this case, is not an employee within the meaning of the Kansas Workers Compensation Act. See Salvation Army v. Mathews, 847 S.W.2d 751 (Ky.App. 1993). Respondent argues that this case is persuasive as the facts are similar and also the Kentucky workers compensation statute definition of an employee is similar to the Kansas statute. The Kentucky court reversed the workers compensation board which had ruled that a student nurse was an employee under the Kentucky Workers Compensation Act as training and control are remunerative advantages. The Kentucky court went on to conclude that the Kentucky legislature did not intend to provide workers compensation coverage for a student visiting a trade, business or professional setting, who receives no remuneration other than training and control, and is not retained in an apprenticeship capacity by that entity.

In determining whether the claimant, in the instant case, is an employee for purposes of the Kansas Workers Compensation Act, we have to examine K.S.A. 44-508(b) which defines a workman, employee or worker. An employee means "any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer." The statute goes on to list certain types of employees that are included in the definition such as persons serving on a volunteer basis as authorized law enforcement officers and persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations. Other volunteers are considered employees if they are in the service of the State as volunteer members of the Kansas Department of Civil Air Patrol and volunteers in any employment, if the employer has filed an election to extend the coverage to such persons. Persons performing community service work also are considered employees, if an election has been filed to extend coverage to them.

The basis on which temporary and permanent compensation benefits are calculated for an injured employee under the Kansas Workers Compensation Act is determined by the employee's average gross weekly wage as contained in K.S.A. 44-511. The legislature in this statute also specifies the method used to calculate the average gross weekly wage of volunteers and sets out a specific monetary average gross weekly wage of \$37.50 for a person performing community service work.

The facts, in the case at hand, establishes that the claimant, as a nursing student, received no remuneration or additional compensation for his participation in the clinical

program as is defined by K.S.A. 44-511. The claimant was not a volunteer, and he was not performing community service while participating in this clinical program. Additionally, training is not included in the definition of money, additional compensation or wage, as contained in K.S.A. 44-511(a)(1),(2),(3).

No contractual relationship existed between the respondent and the claimant. The respondent did have a contractual relationship with Washburn University for the sole purpose to provide a place, equipment and supplies, to educate and train nursing students in the field of nursing care.

Accordingly, the Appeals Board finds that the legislature has not chosen to provide workers compensation benefits to a nursing student trainee while participating in a clinical program. Therefore, after reviewing the appropriate statutes, arguments of the parties, and the whole record, the Appeals Board finds that the claimant is not an employee of the respondent, St. Francis Hospital, as defined in the Kansas Workers Compensation Act. As such, the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer dated January 27, 1994, is reversed and claimant's application for temporary total disability and medical benefits is hereby denied.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer dated January 27, 1994, ordering the respondent to provide temporary total disability and medical benefits to the claimant is hereby reversed in all respects.

IT IS SO ORDERED.

Dated this _____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Roger D. Fincher, PO Box 797, Topeka, Kansas 66601-0797
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Floyd V. Palmer, Administrative Law Judge
George Gomez, Director